U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30354710

Date: APR. 30, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a hockey referee, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner met the initial evidence requirements for this classification through evidence of a one-time achievement (a major, internationally recognized award) or meeting at least three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3). The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To establish eligibility as an individual of extraordinary ability, a petitioner (or anyone on the petitioner's behalf) must establish that they:

- Have extraordinary ability in the sciences, arts, education, business, or athletics;
- Seek to enter the United States to continue work in their area of extraordinary ability; and that
- Their entry into the United States will prospectively substantially benefit the United States.

Extraordinary ability must be demonstrated by evidence of sustained national or international acclaim as well as extensive documentation that their achievements have been recognized in the field. Section 203(b)(1) of the Act.

The implementing regulation further states that the term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." It also sets forth a multi-part analysis. A petitioner can demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If such evidence is unavailable, then they must alternatively provide evidence that meets at least three of the ten listed criteria, which call for evidence about other awards they may have received, published material about them in qualifying media, and their authorship of scholarly articles, among other types of evidence. 8 C.F.R. §§ 204.5(h)(2),(3).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination, assessing whether the record shows that the individual possesses the acclaim and recognition required for this highly exclusive immigrant visa classification. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner is a hockey referee who has officiated games at the national and international levels. He states that he intends to continue working as a hockey referee in the United States, and to establish a hockey school for children.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that they received a major, internationally recognized award, they must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director found that the Petitioner met the evidentiary criterion at 8 C.F.R. § 204.5(h)(3)(viii), relating to his leading or critical role for organizations or establishments with a distinguished reputation. On appeal, the Petitioner asserts that he also meets five additional evidentiary criteria. After reviewing all of the evidence in the record, we conclude the he has not established that he meets the initial evidence requirements for the requested classification.

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.* 8 C.F.R. § 204.5(h)(3)(ii)

In order to meet this criterion, an individual must establish that they are a member of associations in their field of claimed extraordinary ability. In addition, they must show that these associations require that their members have outstanding achievements, and that those achievements were judged to be outstanding by recognized national and international experts in their disciplines or fields.

The Director concluded in her decision that while the Petitioner established his membership in the Ice Hockey Federation of the Republic of Belarus (IHFRB), he did not show that this association requires outstanding achievements of its members. On appeal, the Petitioner reasserts that he is a member of

IHFRB as well as "a member of Belarus national ice hockey team of judges and referees." In support of the second of these claims, he refers to one of several letters in the record from V-R-, an official with the IHFRB, which goes through the steps to becoming an internationally-licensed hockey referee. Although V-R- states in this letter that the progression to this level requires "endorsement of the national federation," there is no indication that an internationally-licensed referee is part of a national team of referees as the Petitioner asserts. Rather, the letter focuses on the path an individual must take to achieve this level in their career.

In addition, an article from the website www.belarushockey.com names several referees from Belarus, including the Petitioner, who were selected to work at youth world championship tournaments, but does not state that they will work together as part of a team of referees from Belarus, unlike hockey athletes who are selected for national teams. While athletes (and potentially coaches) who are members of national teams for the purposes of international competition may meet the requirements of this criterion, provided that the teams require outstanding achievements of their members, the Petitioner has not shown that he is a member of a national team.

Regarding the Petitioner's claim to this criterion based upon his membership in the IHFRB, we note that he did not respond to the Director's request for evidence (RFE) with additional evidence about that association's membership requirements. He renews this claim in his appeal, but the Petitioner does not explain his disagreement with the Director's decision on this point or refer to specific evidence supporting his claim. We therefore agree with the Director's conclusion that the Petitioner has not shown that his membership in the IHFRB required outstanding achievements.

For the reasons stated above, we conclude that the Petitioner has not established that he meets this criterion.

> *Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought.* 8 C.F.R. § 204.5(h)(3)(iv)

This criterion requires that an individual have served as a judge of the work of others, either in their field of expertise or in an allied field of specialization. Here, the record includes ample evidence that the Petitioner has officiated several hockey games as either a linesman or head referee. However, the Director noted that the evidence did not show that the Petitioner judged the work of others in his field in this role, but instead enforced the rules of the game and ensured sportsmanlike competition.

In his appeal brief, the Petitioner refers to two letters from V-R- which describe the duties of a hockey referee, as well as the IHFRB's official rule book and sections from the Belorussian statute regarding sports. The first letter dated July 31, 2023 states that referees are responsible for rule enforcement, game management, and penalty assessment among other duties, and is generally consistent with the rule book and statute concerning the duties of referees. However, none of these duties involve an evaluation of the skill or athleticism or other aspects of the work of the hockey players, who could be considered to be engaged in an allied field of specialization. And while the letter indicates that referees submit post-game reports which document incidents, penalties, and player ejections, it does not state that these reports include any evaluation of the work of the referees.

A second letter from V-R- with the same date reiterates many of the same points as the first discussed above regarding the duties of a hockey referee, but adds that the Petitioner served as an "inspector (supervisor) of judges on ice" during the 2020/2021 and 2021/2022 seasons. The letter provides details about the Petitioner's duties in this role, including observing referees, evaluating their ice skating skills, physical fitness, and knowledge and application of hockey rules, and providing feedback to the referees during the game. However, the letter does not provide details about the events at which the Petitioner performed these duties, such as in which league or age group the games were, the level of the referees being judged, the number of games at which the Petitioner performed these duties, or specific dates of those games. Further, we note that none of the other materials submitted, including the sections of the IHFRB rule book, the Belarus statute regarding sports, and individual game reports noting the names and positions of the officiating crews, mention the position of inspector or supervisor. Also, none of V-R-'s other letters, or those written by several other of the Petitioner's colleagues and acquaintances, mention his work in this capacity.

Depending on the specificity, detail, and credibility of a letter, USCIS may give the document more or less persuasive weight in a proceeding. The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998). Given the lack of detail in V-R-'s letter about when, where, and who the Petitioner judged, and the lack of documentary evidence to support the statements made in the letter, the record does not sufficiently establish that he participated as a judge of the work of others in his field. He has therefore not shown that he meets this criterion.

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v)

In order to satisfy this criterion, an individual must establish that not only have they made original contributions, but that the contributions have been of major significance in the field. For example, an individual may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance. *See Visinscaia*, 4 F. Supp. 3d at 134-35.

The Petitioner on appeal refers to several of our previous decisions for the proposition that reference letters are among the types of evidence that may support a conclusion that an individual meets this criterion. But these decisions were not published as precedents and therefore do not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Unpublished agency decisions and advisory legal opinions, such as the Lawrence Weinig letter to which the Petitioner also refers, are not binding, even when they are published in private publications or widely circulated. *R.L. Inv. Ltd Partners v. INS*, 86 F. Supp. 2d 1014, 1022 (D. Haw. 2000), *aff'd*, 273 F.3d 874 (9th Cir. 2001). As the Petitioner notes, however, we will consider detailed reference letters which are specific in identifying any contributions made by an individual and provide examples of how those contributions were of significance to the individual's field.

Here, the Petitioner lists the reference letters submitted by his colleagues, acquaintances, and employers, but does not identify an original contribution he has made to the field of hockey officiating that has been of major significance. Likewise, the authors of the letters mainly describe his duties as a referee or his performance in this role without specifying any impact or influence this work has had on the broader field. For example, U-R-, a fellow referee, praises the Petitioner's work as a referee in a single game in an Olympic qualifying tournament, but does not suggest that his actions in this game had any influence beyond the game. Another fellow referee, M-S-, describes the Petitioner's career as a referee, beginning with officiating children's hockey, and then states that his "exceptional achievements and original contributions have made him a true leader and innovator in his field." But M-S- does not identify any of these original contributions, or explain why he considers the Petitioner to be an innovator. In addition, repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990. This is also seen in the letter from V-K-, who uses the word "contribution" on three occasions in his letter without providing any detail about any contributions or their impact on the field of hockey officiating.

Several of the reference letters mention that the Petitioner has trained and mentored new referees, but only the previously mentioned letter from V-R- goes into any detail on this potential contribution. As we stated above, the letter is short on details regarding the timing, frequency, and level of these training/mentoring activities. It also includes statements regarding the impact of these activities, such as that the Petitioner's post-game reports "contributed to the broader development and enhancement of officiating standards within the league," and that they "became vital documents in shaping the future of officiating in the league." But the letter does not identify specific officiating standards or rules which were introduced or improved directly due to the Petitioner's work, or otherwise demonstrate that this work remarkably impacted or influenced the field.

The Petitioner also asserts on appeal that because hockey is a popular sport in his home country and he holds an international referee license, his "contributions as a judge and referee are of major significance in Belarus." But the Petitioner misinterprets the requirements of this criterion in making this assertion, as the focus is on original contributions that are of major significance to his *field of endeavor*, not to the general population of his native country. Further, the Petitioner has not demonstrated that performing his duties as a hockey referee has contributed to the field of hockey, whether in Belarus or at the international level.

Finally, the Petitioner points out that he received a "Letter of Gratitude" from the [redacted] for his work in its 2014/2015 Championship Season. But this is a form letter sent to many individuals, as can be seen in its expression of thanks for work "no matter at which category or level." The letter is solely meant to congratulate the group of hockey officials who served during this period on their work, and makes no mention of any individual contribution by the Petitioner.

Per the above discussion, the record does not establish that the Petitioner has made contributions of major significance to his field, and thus he does not meet this criterion.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii)

To meet this criterion, an individual must submit evidence that their work was on display at an exhibition or showcase, and that the nature of that exhibition or showcase was artistic. The Director determined in her decision that the Petitioner's work as a referee in hockey games did not constitute a display of his work at an artistic exhibition or showcase, as the nature of the games was competitive. She also concluded that the Petitioner had not shown, per the requirements of 8 C.F.R. § 204.5(h)(4) regarding comparable evidence, that this criterion does not readily apply to his occupation.

On appeal, the Petitioner refers to two of our previous decisions concerning comparable evidence, one in which we determined that performing artists could qualify under this criterion through comparable evidence, and another concerning whether the comparable evidence provision could be applied to a single criteria. As we noted above, non-precedent decisions are not binding in future adjudications. In addition, the Petitioner is not a performing artist, and the Director did not decline to consider the Petitioner's assertion about comparable evidence based on its application to a single evidentiary criterion.

For comparable evidence to be considered, a petitioner must first show that a criterion does not readily apply to their occupation. 8 C.F.R. § 204.5(h)(4). The Petitioner asserts that the Director did not consider his statement that this criterion does not apply to his occupation because he is not an artist. But an unsupported assertion is not sufficient to demonstrate that an evidentiary criterion does not apply to a particular occupation. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), www.uscis.gov/policy-manual. Also, even if we were to conclude that this criterion does not readily apply to the Petitioner's occupation, he has not demonstrated that the evidence of his work as a hockey referee is comparable to an artistic exhibition or showcase. While the definition of an exhibition includes a public display of athletic skill, it is the skill of the athletes, not the rule-enforcing skill of the officiating crew, that is on display in a hockey game. *Id.*

For all of the reasons discussed above, we conclude that the Petitioner has not established that he meets this criterion.

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. Although he claims that he is eligible under an additional criteria on appeal, relating to published material about him and his work at 8 C.F.R. § 204.5(3)(3)(iii), we need not reach this additional ground because the Petitioner is unable to meet the minimum of three evidentiary criteria. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve his appellate arguments regarding this additional criterion. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

As the Petitioner does not meet the initial evidence requirements of the requested classification, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for those progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown that the significance of his work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and that he is one of the small percentage who have risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

ORDER: The appeal is dismissed.